



MONTANA ASSOCIATION OF COUNTIES

WORKERS' COMPENSATION

REFERENCE MANUAL

REVISED AUGUST 2008

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## DIRECTORY

Montana Association of Counties  
Workers' Compensation Trust  
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**Greg Jackson, Trust Administrator**  
2715 Skyway Drive  
Helena, MT 59602  
(406) 444-4360  
FAX (406) 442- 5238  
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For underwriting, loss control/prevention, safety compliance and training assistance, contact:

Montana Association of Counties  
Risk Management Program  
**Emelia McEwen, Sr. Loss Control Specialist**  
2715 Skyway Drive  
Helena, MT 59602-1213  
406-444-4370  
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For claims filing, status information and reporting fraud, contact:

MACo Claims  
**Keith Stapley, Claims Administrator**  
**Wendy Sesselman, Claims Supervisor**  
PO Box 7059  
2717 Skyway Drive  
Helena, MT 59604  
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1-888-442-8552

## **INTRODUCTION:**

This manual is intended to lend assistance to clerk and recorders, payroll clerks and others who are responsible for assigning payroll classifications and reporting workers' compensation premiums and wages. In most cases, class code placement is a simple procedure. The key is to have current job descriptions that are clear to the insurer.

## **CLASS CODES:**

The payroll clerk places employees in a class code that properly falls within their job descriptions. That job description determines the risk factor, which plays a large role in the premium rate charged. For example, a police officer has a higher risk factor than an office clerk. Therefore, the premium rate charged for the police officer is significantly greater than the clerk. (Refer to pages 7 through 13 for a listing of class codes by job title.)

The MACo Workers' Compensation program uses nine class codes. These code numbers that are used industry-wide to identify employee occupations. For example, a clerk is Class Code 8810. A police officer is Class Code 7720. The insurer determines a premium rate for each class code, basing the rate primarily on claims experience.

## **WAGES:**

"Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee.

Wages include but are not limited to:

- (a) Commissions, bonuses and remuneration at the regular hourly rate for overtime work, holidays, vacation, and sickness periods and shift differential;
- (b) Board, lodging, rent or housing, if it constitutes a part of the employee's remuneration and is based on actual value.

Wages do not include:

- (a) Employee expense reimbursements or allowances for meals, lodging, travel, subsistence and other expenses;
- (b) Contributions made to group insurance or pension plan; or vacation or sick leave benefits accrued but not paid. A broader definition of wages can be found in Montana Code Annotated 39-71-123.

## **PREMIUM CALCULATION:**

Premium rates are calculated from the employee's payroll, per \$100 of earnings. For example, if a clerk earns \$2,000 per month and the premium is \$.50 per \$100 of payroll, the total premium due on the \$2,000 of earnings is \$10.00.

## **EXPERIENCE MODIFICATION:**

Additional factors affect rates, such as the frequency and severity of work place accidents, medical costs, and indemnity payments. This is expressed in the use of an experience modification factor. The factor can be either positive or negative. For example, the clerk referred to earlier generated a \$10.00 premium. If that county has experienced a low accident frequency and severity, they may qualify for a discount, such as -5%. This would adjust the \$10.00 premium to \$9.50.

If the county had poor experience in accident frequency and severity, it would be charged additional premiums. For example, the clerk's \$10.00 premium would be adjusted to \$10.50 if the modification factor was +5%.

## **MULTIPLE JOBS:**

In some cases, an employee may have more than one job task that falls within the position. When that is the case, the class code for the greater job risk is to be used. For example, normally a person working in the sheriff's office as a dispatcher is placed in Class Code 8810 (Clerical). However, if the dispatcher is assigned additional duties, such as serving meals to jail inmates, the risk factor is increased and now the dispatcher must be placed in Class Code 7720 (Police).

## **SEPARATE JOBS:**

If an employee has two separate jobs in the county, the class code may be split. For example, an employee might work as a clerk for 30 hours per week and work as a cook at the jail 10 hours a week. The compensation would be split at 30 hours under Class Code 8810 (times the earnings in that job) and 10 hours under Class Code 9410 (times the earnings in that job).

## **VOLUNTEERS:**

Premium rates are based on wages paid. Exceptions to this are for volunteers who qualify for coverage. These volunteers include search and rescue personnel, sheriff reserve officers, volunteer county firefighters, and volunteer county ambulance crews.

The Appendix has instruction on how to calculate and report premiums for these positions.

## **SUBSEQUENT INJURY FUND:**

A county may want to hire an individual who has had a previous job related injury or is vocationally handicapped. It is important to have that individual certified by the Subsequent Injury Fund, established in 1973. The intent is to assist vocationally handicapped individuals in obtaining employment by offering a financial incentive to employers for hiring certified individuals. Certification should be obtained prior to employment but no longer than (60) days after the date of hire. For instructions, refer to page A-16 of the Appendix.

## **EMPLOYEE OR INDEPENDENT CONTRACTOR:**

By Jack Holstrom, MACo/JPIA Personnel Services Administrator.

A public entity faces great monetary liability and other civil and criminal sanctions if it improperly treats an individual as an independent contractor and it is determined that the individual is actually an employee.

Employees are statutorily granted benefits and rights which independent contractors do not receive. Some of the primary benefits and rights include: minimum wage and overtime, unemployment insurance, social security, Medicare, reasonable accommodation, unpaid leave and medical insurance, workers' compensation benefits, collective bargaining rights, and retirement system benefits.

New legislation addressing the issue of independent contractor status was passed and was effective April 28, 2005. This legislation restores the conclusive presumption of independent contractor status which an independent contractor exemption issued by the Montana Department of Labor and Industry created prior to being overturned by the Montana Supreme Court.

The law now requires that independent contractors must either have the independent contractor exemption issued by the Montana Department of Labor and Industry or must purchase workers' compensation insurance for themselves. Failure of a county to verify that a worker has the exemption or has purchased workers' compensation insurance will probably lead to the conclusion that the worker is an employee.

To obtain an independent contractor exemption from the Montana Department of Labor and Industry, the worker must acknowledge that he has been and will continue to be free from control or direction over the performance of the person's own services both under contract and in fact; and that the applicant is engaged in an independently established trade, occupation, profession, or business.

To obtain an independent contractor exemption from the Department, the worker must obtain a total of 15 or more points from the following list. The Department may award points for items submitted up to the total points in each category.

WC, UI, Revenue accounts for employees (all three)	10 pts	List of equipment & tools with approx. value	6 pts
Memo of Understanding or Contract evidencing independent contractor status	6 pts	Liability insurance policy	6 pts
Business location, lease or rental agreement	6 pts	Bonding	6 pts
Trucking company lease agreement	6 pts	Business Tax form or records Sched C,E,F, or K	6 pts
Valid, current partnership agreement	3 pts	Form 1099's / business tax receipt	3 pts
Professional License	3 pts	application or business license permit	3 pts
Registered name of business with SOS	3 pts	Business structure registration with the SOS	3 pts
Internet, on a professional list, or affiliation	3 pts	Education certification	3 pts
Fed Employer Identification Number FEIN	1.5 pts	Advertise in a newspaper, phone book	3 pts
Business bank account	1.5 pts	Two or more bids or estimates	3 pts
Credit card- charge account in business name	1.5 pts	Telephone bill in business name	1.5 pts
Advertises using sign on vehicle, in yard, bulletin boards, corner lamp post, flyers	1.5 pts	Printed invoices, cards, brochures	1.5 pts
Proof of orders for printed hats or shirts	1.5 pts	Standard billing invoices	1.5 pts

The exemption only relates to the type of work listed on the exemption certificate and the independent contractor cannot have an agreement that the worker's status is that of an employee.

### **SHARED POSITION:**

When a county shares a position with another county, state or federal agency, a decision should be made as to who will act as the employer. The employer should be the one responsible for handling payroll deductions including workers' compensation premiums.

For example, County "A" and County "B" agree to share a sanitarian. County "A" agrees to pay 40% of the salary and County "B" pays 60%. County "B" also agrees to act as the employer. As the employer, County "B" handles the sanitarian payroll, including deductions for insurance, taxes and workers' compensation, etc. County "A", in turn, reimburses County "B" for 40% of County "B's" expenses.

Other shared county positions could include social workers, nurses, assessors, county attorneys, etc.

### **A WORD ABOUT AUDITS:**

At the direction of the MACo Worker's Compensation Trustees, compliance audits are performed. The purpose of the audit is to ensure that all members are reporting accurately.

Prior to an audit, each county will receive a letter giving advance notice. At the conclusion of the audit, assuming that both parties agree on the adjustments, one party will reimburse the other for over- or under-payments, if there are any. Adjustments will go back to:

1. the beginning of the error, or
2. the last audit, or
3. the member county's enrollment date.

If a member county does not agree with the audit, the county may appeal to the Board of Trustees. The final decision will be that of the Trustees. Adjustments will not be required if the auditor determines that a reconciliation would not be economically advantageous to either party.

## CLASS CODES BY JOB TITLES:

The following is a list of occupations that normally fall within a given class code. As mentioned earlier, sometimes there are exceptions. If you have any questions or doubt as to an employee classification, contact MACo Risk Management, phone number **406-444-4370**.

### **CLASS CODE 7704- FIREFIGHTERS AND DRIVERS**

This includes any employee or volunteer firefighter who has duties associated with training, maintenance of equipment, traveling to and returning from, and fighting fires. The actual remuneration of all such individuals will be included with the payroll of regular firefighters in computing the premium. Instructions on establishing wages and computing premium can be found on pages A-6 and A-7.

### **CLASS CODE 7720- POLICE AND DRIVERS**

Constables

Coroners who are deputized (**if not deputized refer to Class Code 8743**)

Detectives

Dispatchers whose duties include working with inmates (**If duties do not include working with inmates refer to Class Code 8810**)

Jailers

Jail Nurses

Probation Officers

Process Servers

\*\* Search and Rescue volunteers

Sheriff Deputies

\*\* Sheriff Reserve Volunteers

Sheriffs

Undersheriffs

\*\* NOTE: Specific guidelines for reporting sheriff reserve and search / rescue volunteers are included in the appendix.



## **CLASS CODE 8743- PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES**

Assessors (paid by the county)

Auditors

Cemetery Managers who do not operate equipment or engage in various kinds of manual activity. **(If they do operate equipment, refer to Class Code 9410).**

Clerk and Recorders

Clerks of District Court

Community Service Coordinators

Coroners and Deputy Coroners who are not deputized. **(Coroners who are deputized refer to Class Code 7720).**

Computer Technicians

County Dentists and Assistants

County Extension Agents

County Sanitarians

County Surveyors (not street or highway). **(If street or highway, refer to Class Code 9410).**

County Attorneys

County Treasurers

County Commissioners who do not operate equipment, or engage in various kinds of manual activity. **(If they do operate equipment, refer to Class Code 9410).**

County Health Nurses, dieticians, nutritionists, (other than a hospital)

County Managers

County Planners

County Superintendents

Court Reporters

Deputy County Attorneys

Deputies to the Elected Officials

DES Coordinators whose duties are confined to the office. **(If not confined to the office, refer to Class Code 9410).**

Directors of nursing who are not involved in the day- to- day activity of transferring residents. **(If they are involved in transferring, refer to Class Code 8824 or 9040).**

Doctors

DUI Coordinators

Election Administrators

Environmental Inspectors

Judges (district, election, justice of the peace and police judges) **refer to page A-15**

Law Clerks

Librarians and assistants

Medical Examiners

Nursing Home / Hospital Administrators

Parent Coordinators

Paralegals

Physical Therapists

Professional supervisors whose duties are not confined to the office.

Program Managers

Program Assistant Managers

Project Coordinators

Public Administrators

Risk Managers

Safety Officers / Directors

Senior Citizen Managers

Social Case Workers

WIC Dietitians

WIC Technicians

**CLASS CODE 8810 – CLERICAL / OFFICE EMPLOYEES**

Dispatchers whose duties are confined to the dispatch center. **(If the dispatcher has other duties, refer to Class Code 7720).**

Engineers

Office Draftsmen

Office Clerks

Secretaries

### **CLASS CODE 8824- NURSING HOMES**

Activities Directors involved in transferring of residents. **(If not involved in transferring, refer to Class Code 9410).**

All other employees involved in transferring of residents

Certified Nurses Aides

Directors of nursing involved in transferring residents. **(If not involved in transferring, refer to Class Code 8743).**

Licensed Practical Nurses involved in transferring residents. **(If not involved in transferring, refer to Class Code 9410).**

Nursing Home Activity Aides involved in transferring residents. **(If not involved in transferring, refer to Class Code 9410).**

Orderlies

Registered Nurses involved in transferring of residents. **(If not involved in transferring, refer to Class Code 9410).**

### **CLASS CODE 9040- NON PROFESSIONAL BLENDED HOSPITAL / NURSING HOME EMPLOYEES**

Activity Directors

Activity Aides

All other employees involved in transferring of residents.

Certified Nurse Aides

Directors of nursing who are involved in transferring residents. **(If not involved in transferring, refer to Class Code 8743)**

Licensed Practical Nurses

Orderlies

Registered Nurses involved in transferring residents. **(If not involved in transferring, refer to Class Code 9410)**

### **CLASS CODE 9410- ADMINISTRATIVE OR NONPROFESSIONAL EMPLOYEES**

Airport Managers and employees (not pilots)

Ambulance Drivers (Volunteer ambulance drivers are included in the Appendix.)

Bailiffs

Building inspectors

Building engineers, maintenance engineers and janitors

Cemetery Managers who do operate equipment or engage in various kinds of manual activity **(If they do not operate equipment, refer to Class Code 8743)**

Cooks

County Commissioners who do operate equipment or engage in various kinds of manual activity (**If they do not operate equipment, refer to Class Code 8743**).

Curators

Delivery persons for meals on wheels

DES Coordinators and volunteers who are involved in field exercises and training (**If they are not involved in field exercises, refer to Class Code 8743**).

Emergency Medical Technician (EMT) and EMT First Responders

Home Chore - Sr. Citizens

Home Health care aides

Janitors

Kitchen helpers

Laboratory employees

Licensed practical nurses not involved in transferring residents (**If involved in transferring, refer to Class Code 8824 or 9040, if in a hospital/nursing home**).

Meter readers

Museum workers

Nursing home and hospital food service employees

Nursing home and hospital housekeepers

Nursing Home Registered Nurses not involved in transferring residents. (**If involved in transferring, refer to Class Code 8824 or 9040, if in a hospital/nursing home**)

Nursing Home Restorative Aides

Park Supervisors

Refuse Supervisors/Solid Waste Managers who do not operate a collection or transfer site. (**If they do operate equipment, refer to Class Code 9420**).

Road, bridge, shop, and weed control supervisors who do not operate equipment or engage in various manual activities. (**If they do operate equipment, refer to Class Code 9420**).

Sewage disposals plant employees.

Surveyors (street or highway) (**For non-street or highway, refer to Class Code 8743**).

Swimming pool employees

Theater/civic employees including box office, ticket takers, ushers, concession, camera & flood light operators. (**For laborers, refer to Class Code 9420**.)

Water treatment plant employees

X-ray technicians

### **CLASS CODE 9016-AMUSEMENT PARK**

A county uses this code to identify employees and volunteers who work during the time when an activity is going on, such as a county fair or concert. Many counties also have full time employees at fairgrounds that perform maintenance tasks, setting up and taking down equipment etc. These employees should be placed in the class code that best fits their job description. Examples include: maintenance 9410, Labor 9420, Clerical 8810 or 8743 etc.

Code 9016 includes clerical and box office employees. Does not include operation or maintenance of amusement devices or rides

All employees and volunteers involved in horse racing

All employees and volunteers involved in fair activities

### **CLASS CODE 9420- ALL OTHER EMPLOYEES AND DRIVERS**

Animal Control Officers

Animal Trappers

Bus Drivers

Cemetery laborers

Heavy equipment operators

Laborers - road and bridge

Landfill employees

Landfill Managers/Supervisors who operate a collection or transfer site. **(If they do not operate transfer site, refer to Class Code 9410)**

Livestock Inspectors (who are not Sheriffs)

Parks grounds keepers/laborers

Predator control officers

Road and bridge, shop, and weed control supervisors who do operate equipment or engage in various kinds of manual activity (refer to class code 9410).

Shop Mechanics

Warehouse Workers

Weed and mosquito sprayers

All individuals on a jail trustee program who are performing work for the county.

Court ordered community service workers.

# **APPENDIX**

**Revised August 2008**

## I. SEARCH AND RESCUE VOLUNTEERS

This information is to give sheriffs and search and rescue a clear understanding of when a search and rescue volunteer is covered by workers' compensation insurance.

### DEFINITIONS

Coverage during travel / training / mission exercises - When a volunteer participates in a pre-approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

During a field-exercise training session, coverage will begin when the volunteer arrives at the designated location and be in effect until the volunteer leaves the training session site.

When called by the sheriff or a designated representative to respond to an emergency, the volunteer will be covered as soon as he/she leaves a place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to the home or work place, or travels or engages in activity outside the scope of search and rescue business.

Designated Representative - an individual appointed by the sheriff who possesses the necessary skills and whose span of control would be considered within reasonable limits.

Log in - to report to the sheriff or the designated representative individually or as a unit. An activity log or sign up sheet showing the time and members present is required.

Personal training session - when rescuers go alone or in a small group to develop personal skills and train without the sheriff or the designated representative approval and without a pre-established training plan.

Pre-approved training activity - The sheriff or designated representative will decide what activities are approved for training, in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a search and rescue volunteer from coverage.

Supervised by the sheriff - "Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff." 42 Op. A.G. No 97 (1988)

The reference to "sheriff" will include the sheriff or the designated representative.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training plan - a brief, written outline of the training activities and overall goals.

### GUIDELINES

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

The sheriff, through the chain of command, decides which activities are approved for training and which search and rescue missions will be undertaken. Pre-approval for a training activity must be in writing and signed by the sheriff or the designated representative prior to the training activity. When a search and rescue volunteer is engaged in an activity approved and supervised by the county sheriff, he/she is covered for workers' compensation benefits

When search and rescue volunteers participate in planned activities, they log-in at the start of the activity. Supervision of the training activity should be specified in the training plan. The sheriff or designated representative supervising the activity will determine the start and end of the training activity. Coverage will begin when the volunteer arrives at the designated training location. Coverage ends when the session is completed.

When a volunteer is working on the unit's equipment or property, he/she will be covered during such activity as long as the activity is scheduled and agreed upon by the sheriff or the designated representative.

## HOW TO CALCULATE AND REPORT PREMIUM FOR VOLUNTEERS

The sheriff will provide to the county payroll clerk a list that includes the names of search and rescue volunteers who participated in training, maintenance and rescue activities for that period. (monthly or quarterly) The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the sheriff's search and rescue log. **The list should be kept on file for audit purposes.**

The volunteers reported are to be placed in Class Code 7720. They are reported at an assumed wage set by the Board of County Commissioners for each county as recommended by the sheriff. The minimum reporting wage can be no less than the federal minimum wage, or State minimum wage which ever is greater.

## II. SHERIFF RESERVE OFFICERS

This information is to give sheriffs a clear understanding of when a reserve officer is covered by workers' compensation insurance.

### DEFINITIONS

Auxiliary Officer - an un-sworn, part time volunteer member of a law enforcement agency who may perform, but is not limited to the performance of, such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities. (MCA 7-32-201(1))

Coverage during travel / training / mission exercises - When a volunteer is to participate in a pre-approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed. During a field-exercise training session, coverage will begin when the volunteer arrives at the designated location and be in effect until the volunteer leaves the training site.

When called by the sheriff or a designated representative to respond to an emergency, the volunteer will be covered as soon as he/she leaves a place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to the home or work place, or travels or engages in activity outside the scope of Sheriff Reserve duties.

Designated Representative - an individual appointed by the sheriff who possesses the necessary skills and whose span of control would be considered within reasonable limits.

General Law Enforcement Duties - operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

Law Enforcement Agency - a law enforcement service provided by local government.

Log in - to report to the sheriff or the designated representative individually or as a unit. An activity log or sign up sheet showing the time and members present is required.

Personal Training Session - when a reserve officer goes out alone or in small groups to develop personal skills and such exercise without the sheriff or the designated representative approval and without a pre-established training plan.

Pre-approved training activity - The sheriff or designated representative will decide what activities are approved for training, in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a search and rescue volunteer from coverage.

Reserve Officer - a sworn, part time volunteer member of a law enforcement agency who is a peace officer as defined in MCA 46-1-202(16) and has arrest authority as described in MCA 46-6-210, only when authorized to perform these functions as a representative of the law enforcement agency.



Supervised by the sheriff - Members of the sheriff reserves are auxiliary officers and will be provided workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

The reference to "sheriff" will include the sheriff or the designated representative.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training Plan - a brief, written outline of the training activities and overall goals.

## **GUIDELINES**

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

MCA 7-32-203 (1), Provision of Workers' Compensation Coverage: Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

The sheriff, through the chain of command, is the person who decides what activities are approved for training and which work assignments will be undertaken.

Pre-approval for a training activity must be in writing and signed by the sheriff or the designated representative. When a sheriff reserve officer is engaged in an activity approved and supervised by the county sheriff, he/she is covered for workers' compensation benefits.

When sheriff reserve officers participate in planned activities, they log-in at the start of the activity. Supervision of the training activity should be specified in the training plan. The sheriff or the designated representative supervising the activity will determine the start and end of the training activity. Coverage for classroom training ends when the session is completed.

Under no circumstances will "personal training sessions" be insured.

During a field exercise or training session, coverage will be in effect until the volunteer returns to the home or work place or otherwise travels or engages in activity outside the scope of law enforcement business.

## **HOW TO CALCULATE PREMIUMS FOR VOLUNTEERS**

The sheriff will provide to the county payroll clerk a list that includes the names of reserve officers who participated in training and for law enforcement duties for that period. (monthly or quarterly). The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the sheriff's reserve officer log. **The list should be kept on file for audit purposes.**

The volunteers reported are to be placed in Class Code 7720. They are reported at an assumed wage set by the Board of County Commissioners for each county as recommended by the sheriff. The minimum reporting wage can be no less than the federal minimum wage, or State minimum wage which ever is greater.

## **III. VOLUNTEER FIREFIGHTERS**

This information is to give fire chiefs' and county commissioners a clear understanding of when a volunteer firefighter is covered for workers' compensation insurance.

## **DEFINITIONS**

Coverage during travel / training / mission exercises - When a volunteer is to participate in an approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

When called to respond to an emergency, the volunteer will be covered as soon as he/she leaves the place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to home or work place, or travels or engages in activity outside the scope of volunteer fire fighting business.

Log in - to report to a fire chief individually or as a unit. An activity log or sign up sheet showing the time and members present is required.

Personal training session – when a volunteer firefighter goes alone or in a small group to develop personal skills or train without the fire chief's approval and without a pre-established training plan.

Pre-approved training activity - The fire chief will approve activities for training in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a volunteer from coverage.

Supervised by the fire chief - Members of a recognized volunteer fire unit may be provided full workers' compensation coverage when engaged in fire training or a testing operation called and supervised by the fire chief.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training plan - a brief, written outline of the training activities and overall goals.

Volunteer firefighter - a firefighter who is an enrolled and active member of a fire company organized and funded by a county or a county fire service area.

## **GUIDELINES**

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

The fire chief decides what activities are approved for training. Pre-approval for a training activity will be in writing and signed by the fire chief prior to the training activity. When a volunteer firefighter is engaged in an activity approved and supervised by the fire chief, he/she is covered for workers' compensation benefits.

When volunteer firefighters participate in planned activities, they log in at the start of the activity. Supervision of the training activity should be specified in the training plan. The fire chief must conduct supervision of the training activity. Coverage will begin when the volunteer arrives at the designated training location. Coverage ends after the training is completed.

## **HOW TO ENROLL VOLUNTEERS**

In accordance with Montana statutes addressing workers' compensation for a volunteer firefighter, 39-71-118(5), county commissioners may elect to provide workers' compensation benefits. In the event of such election, the commissioners must give MACo Workers' Compensation Trust written notice naming the fire company and areas to be covered and determining the average weekly wage of the unit. 39-71-116(2) defines "average weekly wage" as the weekly earnings of all employees under covered employment. This is in reference to wages earned by the volunteers in their regular employment.

## **HOW TO CALCULATE PREMIUM FOR VOLUNTEERS**

The fire chief will provide to the county payroll clerk a list that includes the names of volunteer firefighters who participated in fire training and fire fighting for that period. The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the fire chief's log.

**The list should be kept on file for audit purposes.**

Volunteers are to be placed in Class Code 7704. A copy of the list showing the number of hours worked is submitted to MACo with the payroll report and payment. A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

**MACo REQUIRES A MINIMUM PREMIUM OF \$100.00 ANNUAL COST FOR EACH VOLUNTEER FIREFIGHTER.**

For example, \$100 x 15 volunteers = \$1,500.00 annual workers' compensation premium.

By Montana law, workers' compensation premiums and weekly compensation benefits for volunteer firefighters is based on the number of training hours, number of calls and station duty. Below is an example of how that might work:

# calls	9
# volunteers	15
Time on calls	30 minutes each
Call hours	$(9 \times 30 / 60) = 4.5 \text{ hours} / 15 \text{ volunteers} = .3$
.3 calls per volunteer	
+30 hours of training per volunteer	
+30 hours of station or other duty per volunteer	
=60.3 total hours per volunteer	

With an average hourly wage for the unit of \$9.33, the calculation is:

$60.3 \times \$9.33 \text{ hourly rate} = \$562.60 \text{ payment value}$

$\$562.60 \times \$5.95 \text{ (work comp rate for \$100 per earnings)} = \$33.47 \text{ annual cost per volunteer.}$

$\$33.47 \times 15 \text{ volunteers} = \$502.05 \text{ annual workers' compensation premium.}$

## IV. VOLUNTEER AMBULANCE PERSONNEL

This information is to give county commissioners and volunteer ambulance units to have a clear understanding of when an ambulance volunteer is covered by workers' compensation insurance.

### DEFINITIONS

Coverage during travel / training / mission exercises - When a volunteer is to participate in a pre-approved and supervised training activity, coverage will begin when the volunteer arrives at the designated location. Coverage ends after the training session is completed.

When called to respond to an emergency, the volunteer will be covered as soon as he/she leaves the place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to the home or work place, or travels or engages in activity outside the scope of volunteer ambulance business.

Log-in - an activity log or sign up sheet showing the time and members present is required.

Personal training session - when a volunteer goes alone or in a small group to develop personal skills and train without a pre-established training plan approved by the supervisor.

Pre-approved training activity - The supervisor will approve activities for training in writing and prior to the training activity. MACo Risk Management or the County Safety Officer may be included to insure that safety is addressed. However, if MACo Risk Management or the County Safety Officer is not included, it will not jeopardize a volunteer from coverage.

Supervised by the supervisor - members of a recognized volunteer ambulance unit may be provided full workers' compensation coverage when engaged in an emergency response, training, or testing operation called and supervised by the supervisor.

Training - to instruct; to bring into proper body condition; to undergo special drill.

Training plan - a brief, written outline of the training activities and overall goals.

### GUIDELINES

For those counties insured under the MACo Workers' Compensation Trust, premiums for such coverage must be paid within the due dates.

When ambulance volunteers are engaged in an activity that is approved and supervised, they are covered for workers' compensation benefits. The supervisor decides which activities are approved for training. The approval must be in writing prior to the training activity.

When ambulance volunteers participate in planned activities, they log-in at the start of the activity.

Supervision of the training activity should be specified in the training plan--the supervisor conducts supervision of the training activity. Coverage begins when the volunteer arrives at the designated training location; coverage ends when the training session is over.

## **HOW TO CALCULATE PREMIUM FOR VOLUNTEERS**

The ambulance supervisor will provide to the county payroll clerk a list that includes the names of volunteer ambulance employees who participated in ambulance training and emergency response for that period. (monthly or quarterly). The list will show the number of hours each volunteer worked. The hours reported should agree with the hours posted in the unit's log. **The list should be kept on file for audit purposes.**

Volunteers are to be placed in Class Code 9410. They are to be reported at an assumed wage. The minimum reporting wage can be no less than the federal minimum wage.

## **EMERGENCY MEDICAL SERVICES FIRST RESPONDER UNIT**

First responder units are becoming more numerous as population increases. The purpose of the unit and job descriptions for volunteers match those for volunteer ambulance services. Personnel qualify for workers' compensation and should be reported for coverage.

The guidelines for their coverage in the MACo workers' compensation program are the same as for volunteer ambulance personnel.

## **V. COURT ORDERED COMMUNITY SERVICE WORKERS COUNTY JAIL TRUSTEES**

Pursuant to MCA 39-71-118 (f), the definition of "Employee" includes a person performing community service for, among others, a local government entity under a court order. MCA 39-71-118 (b) includes juveniles performing work under authorization of a District Court judge in a delinquency prevention or rehabilitation program.

For a person covered by the definition, compensation benefits are limited to medical expenses and an impairment award.

The law states that premiums must be paid by the employer and must be based upon the minimum wage for the number of hours of community service required under the order from the court (or hearings officer, in the case of probation or parole violations).

Pursuant to MCA 7-32-2225, a county may operate a county jail work program. The program may be established to allow jail inmates convicted of nonviolent offenses to serve a sentence of imprisonment in the county jail by performing county work without actual physical confinement in the county jail. The program must be authorized by the county commissioners and supervised by the sheriff. Other requirements are outlined in MCA 7-32-2226 and 7-32-2227

The Montana Association of Counties Workers' Compensation Trust will provide coverage to member counties provided the proper steps are taken as outlined below.

While the Trust does not discourage members from implementing a jail work program, it encourages counties to weigh the decision carefully. Counties must give significant consideration to all risk, determine what can be done to minimize or eliminate the exposure and then determine if there is adequate protection.

If coverage is to be extended by the Trust, the following steps must be followed:

1. The community service must be performed pursuant to a court or hearings officer order;
2. If the program is being performed pursuant to MCA 7-32-2225 through 2227, it must be authorized by the commissioners; and

3. Exact hours must be kept. A record of the service performed is to be reported to the Trust on its quarterly payroll reports at the current minimum wage rate or the hourly wage rate determined by the Judge. The individuals are to be reported under Class Code 9420. **The record should be kept on file for audit purposes.**

The court case number can be used in reporting if the individual's name is not available.

Questions concerning this matter can be directed to Emelia McEwen, Sr. Loss Control Specialist, 406-444-4370.

## **VI. ELECTION JUDGES**

Election judges are considered to be county employees. Therefore, it is important to report these people for workers' compensation.

### **HOW TO CALCULATE PREMIUMS**

Some counties pay election judges by voucher and others include them in their payroll system. For workers' compensation purposes, either one is acceptable. Reporting compensation / wages is as simple as identifying the amount of dollars paid to the judges and applying rates for Class Code 8743 to that payroll.

MACo Workers' Compensation program does not require that election judges be included in a payroll system unless the county so chooses.

## **VII. GENERAL VOLUNTEERS**

### **VOLUNTEERS INCLUDING SEARCH AND RESCUE, SHERIFF RESERVE, FIREFIGHTERS, AMBULANCE PERSONNEL, AND OTHERS DESIGNATED BY THE COUNTY FOR PREMIUM YEAR 7/1/08 – 6/30/09**

The MACo Workers' Compensation Trust allows an insured county the option to insure volunteers who otherwise would not be covered by worker's compensation. Coverage for reserve officer and ambulance service personnel is mandatory. Below are guidelines to follow regarding volunteer coverage and reporting.

#### **DEFINITION**

A volunteer is one who enters into service to assist a county in a county sanctioned activity and receives no wages for such service.

#### **BENEFITS AVAILABLE**

Covered volunteers receive medical benefits in accordance with the provisions of the Montana Workers' Compensation Act and indemnity benefits based on the average actual wages in the volunteer's regular employment, except self-employed as a sole proprietor or partner if the volunteer has elected not to be covered in the volunteer's personal business.

#### **GENERAL GUIDELINES**

Coverage Generally: Coverage for volunteers extends to the time spent by the volunteer in service of the county, including training time and response time.

Training: The supervisor of a volunteer decides what activities are approved for training. Pre-approval by the County Commission is required for a training activity. The request for approval of a training activity must be in writing and signed by the supervisor prior to start of the training activity. When a volunteer is engaged in an activity approved and supervised, the volunteer is covered for workers' compensation benefits. Unsupervised personal training sessions are not covered for workers' compensation purpose.

When a volunteer participates in a training activity, the volunteer must log in at the start of the activity.

Supervision of the training activity shall be specified in the training plan. The supervisor must conduct the supervision of the training activity. Coverage will begin when the volunteer arrives at the designated training location, and ends after the training session is completed.

Emergency: When called to respond to an emergency, the volunteer will be covered as soon as the volunteer leaves the place of origin and proceeds to the location of the emergency. Coverage will not be in effect after the volunteer returns to home or the work place, or travels or engages in activity outside the scope of volunteer activity.

### **VOLUNTEERS: PREMIUM COLLECTION & REPORTING GUIDELINES**

Covering volunteers with workers' compensation insurance can lead to significant obligations affecting a county's injury experience and modification factor, as well as financial obligations for the Trust. It is essential that a salaried county supervisor maintain detailed records as to the time incurred and the activity performed by each volunteer, and that those detailed records are provided to the insurer.

**For payroll reporting purposes, the volunteer's work activity shall be placed in the class code that best describes the volunteer's work. For search and rescue and sheriff's reserve the code is 7720, for firefighters 7704-volunteer, and ambulance personnel 9410. The wage reported for each hour shall be an assumed wage based on the current state minimum wage. The current minimum wage is \$6.25 per hour (effective 1/1/08) then \$6.55 (effective 7/24/08); and that figure is adopted by the Trust as the assumed wage for the insurance year 7/1/08 - 6/30/09. However, for sheriff's reserve the assumed hourly rate is the county's hourly wage for starting deputies.**

### **ADDITIONAL PREMIUM AND REPORTING REQUIREMENTS FOR VOLUNTEER FIREFIGHTERS**

Due to high risk exposure, the Trust requires an annual minimum premium for each covered volunteer firefighter as of July 1, 2008, of one hundred dollars (\$100.00) per volunteer firefighter per year. This \$100 minimum premium payment shall be made with the first (July 1<sup>st</sup> – September 30<sup>th</sup>) Payroll Report due by October 15<sup>th</sup> for every volunteer firefighter on the annual roster. If volunteer firefighters are added during the year, the Trust is to be notified, and the \$100 minimum payment shall be paid for those added firefighters with the next due quarterly Payroll Report.

Please note: The \$100 minimum payment is only a minimum to be paid. If, during the year, any volunteer firefighter's annual cumulative premium as calculated above (current state minimum wage times specific period of time in hours or fractions of hours each volunteer participated in any county volunteer activity times the current class code 7704 premium rate of .1204) exceeds \$100.00, then that calculated premium becomes the premium due, and the excess premium above the \$100.00 already paid also needs to be reported and paid with the payroll reports for those remaining quarters impacted. (The county payroll office needs to calculate the premium each quarter, as the county may be required to pay premiums of more than \$100.00 per volunteer firefighter per year.) A roster of volunteer firefighters and their hours of service to the county must be submitted with each quarterly Payroll Report.

## **VIII. SUBSEQUENT INJURY FUND**

### **GENERAL OVERVIEW**

Montana's Subsequent Injury Fund, MCA 39-71-901, assists vocationally handicapped individuals in obtaining employment by offering a financial incentive to employers for hiring certified individuals. Many states have similar funds called Subsequent or Second Injury Funds. Montana's program is funded through an annual assessment of all Montana in an amount of up to 5% of each insurer's compensation payments for the previous fiscal year.

### **DEFINITION OF VOCATIONALLY HANDICAPPED**

"Vocationally Handicapped" refers to a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or ... reemployment ... considering such factors as the person's age, education, training, experience and employment rejection.

### **ADVANTAGES OF PARTICIPATION**

An injured or vocationally handicapped worker may encounter difficulty in obtaining employment because of the prospective employer's concerns about the extent of financial liability in the event the worker incurs a work-related injury. The Subsequent Injury program helps alleviate the employer's concern by placing an upper limit on the liability of an employer (or its insurer) should the worker become injured or re-injured on the job. When that upper limit is reached, the Subsequent Injury Fund assumes liability. The certified worker is, therefore, more likely to be hired.

If a certified worker does become injured on the job, the worker remains entitled to all benefits due under the Workers' Compensation Act.

By hiring an injured or vocationally handicapped worker who has been certified by the Montana Department of Labor and Industry, the employer is able to hire an experienced, skilled worker, while limiting the financial exposure to payment of the first 104 weeks of benefits, if the employee becomes injured on the job. After the employer has actually paid 104 weeks of benefits, the Fund assumes all remaining liability.

### **CERTIFICATION PROCESS**

#### **Required Action of Worker**

Any worker who has a medically certifiable permanent impairment (as defined by the American Medical Association's "Guide to the Evaluation of Permanent Impairment") may apply to the Montana Department of Labor and Industry for certification under the Subsequent Injury Fund. The application form includes the Medical Evidence of Impairment form. (Other medical information may be substituted if it is equivalent.) The applicant must either be unemployed, off work due to the injury, or must apply within 60 days of rehire.

The application should attach an explanation of why the impairment is hindering employment or return to work. The explanation should address such factors as the worker's age, education, training, experience, employment rejection and physical limitations. The worker, a rehabilitation counselor or another party familiar with the worker's situation and qualifications may prepare the explanation.

Qualified Department of Labor and Industry personnel will review the application to determine whether the applicant meets the requirements for certification set forth in the law. The Department may also review related workers' compensation claim files. However, claim files are not always readily available, so it is important for the applicant to complete the forms thoroughly.

The Department will notify the worker of approval or denial after the completed application has been reviewed. If the application is approved, the Department will send the applicant a wallet-sized card identifying the worker as a certified, vocationally handicapped person.

The worker should present this card to the prospective employer as proof of his eligibility for Subsequent Injury Fund benefits, so the employer may complete the employer's half of the application requirements.

#### **Required Action of Employer**

Within 60 days of hiring a certified worker, or prior to a compressible work-related injury, the employer must file a completed "Certificate of Employment" form with the Montana Department of Labor and Industry. If the Department does not receive this form, the employer's insurer may not be eligible to receive the financial protection of the Subsequent Injury Fund for that worker. (The worker will still be eligible for full benefits from the employer's insurer). Upon receipt of the Certificate of Employment, the Fund will acknowledge receipt of the form within ten working days to the employer and insurer.

A sample form is attached. Forms can be obtained from Montana Department of Labor and Industry  
Employment Relations Division  
PO Box 8011, Helena, MT 59604  
Phone 406-444-7737.

## **SUBSEQUENT INJURY FUND CLAIMS**

### **Worker**

The worker who becomes injured on the job must follow the standard procedure for filing a claim to be entitled to all benefits due under the provisions of the Workers' Compensation Act in force on the date of injury.

### **Employer**

The employer should notify its insurer that the Subsequent Injury Fund certifies the insured worker. This will allow the insurer sufficient time to notify the Subsequent Injury Fund of its potential liability in accordance with the law

### **Employer's Insurer**

When a worker certified under the Subsequent Injury Fund is injured in the course and scope of employment with an employer to which he is certified, the employer's insurer must notify the Fund (not less than 90 days or more than 150 days before the expiration of 104 weeks after the date of injury) of the Fund's potential liability.

If the above deadline is not met, the Fund will accept liability 90 days from the date of notification. The Fund will not accept retroactive liability in these cases.

If the Fund does not notify the insurer of its intent to dispute a payment of benefits beyond 104 weeks, the insurer will continue to make payments as required under the Workers' Compensation Act, which will be reimbursed by the fund every six (6) months.

## **IX. USE OF SICK OR ANNUAL LEAVE WHILE ON WORKERS' COMPENSATION**

Because the law addresses this issue differently for injured employees, contact MACo claims adjuster to help you determine eligibility. (alternative services concepts Administrative Services, PO Box 517, Helena, MT 59624)

MCA 39-71-736 Compensation—from what date paid

- (1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, which ever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation with the 7<sup>th</sup> day.  
(b) However, separate benefits for medical and hospital services must be furnished from the date of injury.
- (2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period
- (3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.
- (4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits.

## **X. DEPUTY SHERIFF PAYMENT OF PARTIAL SALARY WHILE INJURED**

County personnel are advised, under §7-32-2113, MCA, that payment of partial salary of a deputy sheriff must be



made if an injury occurs in the performance of duty and the injury results in disability. The section provides as follows:

(1) A deputy sheriff who is injured in the performance of the deputy sheriff's duties and who requires medical or other remedial treatment for injuries that render the deputy sheriff unable to perform the deputy sheriff's duties must be paid by the county the difference between the deputy sheriff's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the deputy sheriff must be unable to perform the deputy sheriff's duties as a result of the injury.

## **XI. REPORTING INCIDENTS / ACCIDENTS**

### **FILING A WORKERS' COMPENSATION CLAIM**

Reporting injuries is addressed in the Montana Workers' Compensation Laws under MCA 39-71-601, 602, and 603.

Notice of injuries is to be submitted within 30 days after the occurrence of an accident that is claimed to cause an injury. Notice is to be given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on part of the employer or the employer's managing agent or superintendent in charge of work in which the injured employee was engaged at the time of injury is equivalent to notice. A claimant or a claimant's representative must file a claim within 12 months from the date of injury. Failure to do so could cause the claim to be denied.

- 1) A county should adopt a good incident report form. (See attached sample).
- 2) A reporting policy should require that all incidents are to be reported as soon as possible and no later than the end of the work shift. (See sample policy). This should be the case whether or not injury or property damage occurred. The policy needs to be backed up with disciplinary action when necessary.
- 3) The county should distribute the policy to all employees and explain it. It is important that employees know and understand the policy and why it is being implemented. The policy should be reviewed during new employee orientation.

An incident may or may not involve injuries. Sometimes an injury is not apparent at the time and does not surface until later. So, a good reporting system is critical to the employee, the employer and the insurer.

When an accident occurs involving injury, the supervisor should complete an incident report and investigate the accident. If the injury is minor and does not require medical treatment, that should be noted on the incident report. The supervisor should check with the employee the next day and again on the second or third day to determine if the minor injury has worsened and now should be treated by a medical professional. In most cases, minor injuries do not worsen. The supervisor should note determinations on the incident report and then file it.

**If the employee wants to have the injury examined by a medical professional or if the Supervisor convinces the employee to have the injury examined, the employer should complete the first report of notice and file the workers' compensation claim with**

MACo Claims  
PO Box 7059  
Helena, MT 59624.

It is most important that the supervisor is the person who completes the form and that the employee completes only the employee's claim for compensation section at the bottom of the form and signs it. The person in charge of payroll may have to enter in the wage information if the claim is going to include wage loss.

If an employee's injury is going to involve a period of time that the employee is off work, the employer should check in with the employee. When the healing of the injury has progressed to a point where the employee can return to work on a limited basis, the employer should work closely with the doctor, claims adjuster and the rehabilitation counselor (if one is involved) in establishing a light duty temporary job. Ordinarily, the doctor would review the employee's job description and determine which tasks could be performed without causing a re-injury. Typically the duties will progress until the employee is performing all of

the job tasks on a full-time basis.

By following this recommended outline, you will find:

- + Fewer claims filed by individuals who are attempting to malingering
- + Injured employees returning to work sooner
- + Injured employees recovering faster
- + Reduced long-term disability claims
- + Better employee moral
- + Less absenteeism
- + Lower accident costs.

# **Early Return to Work Guidelines**

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# **Overview**

## OVERVIEW

**An important part of our jobs as department heads, managers and supervisors is to work with the employee to return him or her to a happier, more productive active working status. Take a deep breath and start with this premise for your County and you will create a positive, safe and healthy work environment which will not only benefit the employee but will also reduce your workers' compensation costs.**

These ***Return to Work Guidelines*** are a resource to assist you in creating the kind of workplace that welcomes and respects employees with different experiences and different abilities. The information included is easy to follow and includes checklists and sample templates that provide practical ideas in building a successful return to work plan.

Although the ***Return to Work Guidelines*** are meant to provide consistent processes, every employee's situation is unique. We encourage you to try new ways to support employees returning to the worksite and to consult with your human resource contact about any questions you may have. Thank you for your efforts to help employees in their return to work after illness or injury. Your support makes a significant difference.

MACo Risk Management

## Purpose

These early return to work guidelines will:

- help managers and supervisors assist injured and ill employees return to work in a safe and timely manner after a medical absence,
- provide consistent return to work processes for both occupational and non-occupational injuries and illnesses,
- **help individuals feel connected to and involved with their jobs, and**
- **enhance the employment potential of employees requiring accommodation, and meet employer obligations under the Americans with Disabilities Act.**

Use these guidelines to:

- provide a set of general instructions to assist in returning employees to work,
- identify when a need to accommodate may exist,
- learn the steps to be taken to assist the accommodation,
- understand the roles of the employer, employee, and other stakeholders, and
- identify responsibilities under the American Disabilities Act.

## Rationale

Counties strive to provide a positive, healthy, and safe work environment for its employees. Through working together, managers, supervisors and employees jointly create healthy workplaces. For employees, return to work after a medical leave can mean:

- recognized and valued individual expertise,
- increased sense of being valued by the organization,
- improved recovery rate, and
- decreased emotional impact of extended absence from work, and protected employability.

Safe and timely return to work contributes to healthy workplaces. Some employer benefits can include reduced:

- casual illness, general illness and long term disability costs,
- replacement employee costs,
- work flow disruptions, and
- employee turnover.

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## Roles & Responsibilities

Return to work involves the employer employees and other stakeholders. Major responsibilities are described here to help explain the functions of each role and how they work together through the return to work process.

As the Employer, we have the following obligations to our employees:

- to find available opportunities to return employees to the workplace, and
- to assess the workplace's operational requirements, and how those requirements can be met when returning employees to work.

In the return to work process the employer is represented by managers, supervisors and/or human resources.

### **Managers and Supervisors**

Once an employee has made a return to work request (which may or may not require an accommodation), managers and supervisors should consult their human resources (HR) contact. As managers and supervisors are central to the return to work process (through coordinating their employee's return to work), managers/supervisors should:

- keep medical and other health information confidential,
- review the request and where appropriate assess, identify and implement potential return to work measures,
- determine if there is enough information about an employee's limitations to begin helping them return to work. If not, managers and supervisors can ask their employee to provide more medical information, such as:
  - *verification of medical condition or disability,*
  - *request for prognosis (not diagnosis),*
  - *expected return to work date,*
  - *likelihood of any limitation or need for accommodation on returning to work, and*
  - *length of time restrictions are required,* request information about abilities and restrictions from the employee first. If additional information is required, contact your HRC,
- provide the employee with job descriptions and summaries of job duties outlining any physical demands of the position, along with proposed return to work duties for the employee to take to their family physicians for response,
- safeguard the confidentiality of all health information provided by the employee, document all meetings, and involve human resources as required,
- discuss return to work options with the employee,
- work with the employee to implement, monitor and review return to work measures,



- keep the employee's privacy in mind, by supporting a smooth transition in the return to work process,
- educate co-workers how to show support for the returning employee,
- identify workplace issues that may affect the employee's safe and timely return to work,
- stay in regular contact with the employee during their medical leave to support a safe and timely return to work. Managers and supervisors should stay in touch with their employees while on illness leave, but will want to ensure they balance keeping in touch with respecting an employee's circumstances and medical conditions,
- promote an open and cooperative process, so all stakeholders participate in the return to work plan, and
- continue to communicate with employees, human resources, and when necessary, the assigned external consultant, to support continued return to work efforts.

### Employees

Employees provide the manager/supervisor with relevant medical information supporting the need for accommodation in returning to work and also detailing personal abilities, limitations and restrictions. Employees are encouraged to:

- identify how this need conflicts with employment duties and responsibilities and wherever possible, provide suggestions for reasonable return to work measures,
- cooperate fully with supervisors in the review of return to work measures and their implementation,
- participate in the return to work process and accept a reasonable offer of accommodation, (**A definition of "reasonable offer of accommodation"** – *An opportunity for meaningful work that respects the employee's abilities and limitations, and contributes to the business plan and the worksite operational plan.*)
- consider the best possible solution for all stakeholders, which may be different than their preference,
- provide medical documentation that has been completed by treating physicians, specialists or other qualified medical health practitioners, as requested by their employer. This obligation is a continuing one for the duration of their return to work, and
- recognize their preferred option may be met and implemented, or, acknowledge when it may not be achievable.

### Human Resource Contacts

Human Resource Contacts are appropriate resources to managers and supervisors.

HRCs should:

- keep medical and other health information confidential, and

- advise and provide guidance to managers and supervisors about workplace insurance and benefit entitlements, collective agreements, and policies,
- review position descriptions to identify appropriate qualifications and competencies,
- work with managers, supervisors and their employees to ensure competencies and positions are compatible with the limitations outlined, and
- provide return to work alternatives starting with employees' own positions with modifications, and if necessary, reviewing available positions within employees' own worksites or across the county.

### **Service Providers**

Service providers from MACo claims department may be asked to assist managers and supervisors in the return to work process. Service providers should:

- keep medical and other health information confidential,
- offer expert services, which could include arranging for independent assessments,
- share information regarding employees capabilities and return to work plans, with the managers or supervisors, human resources contacts, and other involved stakeholders, and
- suggest options that have been successful in other return to work situations.

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## Return to Work Process

## **General Illness**

Not sure how to start the return to work process? The following information outlines key considerations to ensure employees have the best chance possible of fitting back into their pre-disability employment and worksite. (See **Definitions - Temporary** and **Permanent limitations**.)

Obtain confirmation from the treating physicians that there will be temporary or permanent limitations to the employees' abilities to fulfill obligations of their pre-disability employment. (See **Definitions: Temporary** and **Permanent** limitations.)

1. In consultation with the employee and the treating physician, determine what return to work accommodations need to take place: Job modifications, workplace modifications, or both. (See **Definitions**.)
2. Through consultation with the employee be sure to thoroughly understand how medical restrictions may affect employees' abilities to work, and for how long.
3. Arrange for any necessary job or workplace modifications.
4. Develop a return to work plan with the employee in consultation with their treating physician, which outlines workplace re-entry goals, objectives and milestones. (See **Return to Work Plan**, under **"Forms, Sample Letters and Instructions"**)
5. Monitor progress.
6. Re-evaluate the return to work plan with the employee to be sure goals and objectives are appropriate. Offer and ensure the employee's aware of support services like the Employee Assistance Program (EAP).

## **Definitions**

General Illness means any sickness, disability or injury (other than self-inflicted) that causes employees to be absent from work for more than three (3) consecutive work days.

### **Temporary Limitations**

- Modifications or alterations to employees' job duties or hours of work are temporarily changed to allow them time to recover from an injury or illness.
- The medical prognosis suggests recovery and rehabilitation should help employees to resume their former job duties.

### **Permanent Limitations**

- Changes to employees' condition are indefinite as a result of the injury or illness.
- The medical prognosis supports that employees are unlikely to return to their former job duties.

### **Job Modifications**

- Changes to job duties and responsibilities that take medical limitations into account, allowing employees a safe and healthy return to work.
- Medical restrictions determine how the job could be modified, and for how long. job modifications may include:

- *reduced number of hours worked for a specified period of time,*
- *frequent rest breaks,*
- *self-paced work,*
- *reduced repetitive and physically demanding tasks,*
- *larger assignments divided into smaller tasks, and*
- *flexible work schedules.*

### **Workplace Modifications**

- Changes to the worksite or work area and equipment that take medical limitations into account, allowing employees a safe and healthy return to work.
- Workplace modification examples may include the following:
  - *ergonomic adjustments to work stations or recommendations for new equipment, like chairs or tools,*
  - *more accessible work environment, like assigned parking or ramps,*
  - *fewer noise and visual distractions,*
  - *telecommuting, if possible, and*
  - *rest area, if job requires a lot of standing.*

(See ***Return to Work Plan***, under “***Forms, Sample Letter and Instructions***”.)

## **Need to Accommodate Legal Framework**

### A review of the ADA's interactive process

The Americans with Disabilities Act (ADA) and its Montana counterpart, the Montana Human Rights Act, place an affirmative obligation on you and your disabled employee to assess any reasonable accommodation for a physical or mental impairment. Also, the Montana Workers' Compensation Act provides that if a treating physician releases a worker to return to the same, modified or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage that the individual received at the time of injury, the worker is no longer eligible for disability benefits even though the worker has not reached maximum healing.

#### **Checklist:**

The following factors are integral to an effective completion of the interactive process as required by the ADA:

- ☐ Identify the job at issue.
- ☐ List the essential job functions (if they haven't already been set forth). Include a review of any applicable job descriptions or memorandums indicating or describing the duties and responsibilities.
- ☐ To understand the full scope of the job, also list the marginal or nonessential job functions.
- ☐ Identify each restriction or limitation of the employee that may affect his/her ability to engage in a function or process that's associated with the work.
- ☐ Arrange for the employee to submit a note or statement from his/her medical care provider that identifies the limitation on the physical or mental ability. The request, however, should relate only to the limitation on a work-related function without inquiring into the nature or extent of the illness. For instance, the physician should indicate that there's a limitation on using pneumatic tools instead of generally stating that the employee has carpal tunnel symptoms.
- ☐ You should engage in a meeting or series of meetings with the employee to assess the limitations and discuss and identify reasonable accommodations, if any, to permit his/her to perform all of the essential job functions.
- ☐ At the meeting with the employee, first review and confirm the limitations provided by the physician. It's very important that you document that conversation.
- ☐ If the employee doesn't agree with the limitations, she needs to obtain clarification from the physician. If your county wants a second opinion, follow the applicable provisions of the ADA.
- ☐ Next, review each accommodation proposed by either side for feasibility and effectiveness. Document the entire conversation by listing each proposed accommodation and indicating its viability. This process requires an exchange of ideas from both parties.
- ☐ If questions arise regarding the manners or ways in which a particular limitation may be accommodated, you can contact the Job Accommodation Network for advice and information. The phone number is (800) 526-7234.
- ☐ If accommodations may impose an undue hardship on your county or other employees, you need to fully consider those factors. That evaluation needs to be documented.

- ☐ Consider the employee's preference, and select and implement the accommodation most appropriate for your county and the employees.
- ☐ Conclude the interactive process by documenting a plan for implementing the selected accommodation.
- ☐ Confirm with the employee in writing that the agreed-on plan covers limitations and details the accommodations that will be implemented.
- ☐ Monitor the plan by (1) meeting with the employee to establish or implement the accommodations and (2) periodically confirming with him/her that the accommodations are effective. Document the plan's progress.

This flexible, interactive process should be used both for an employee who needs a reasonable accommodation to perform the essential functions of a job already held, and as a part of the job application process. It's extremely important to document every step of the process. It's also a good idea to have the employee verify and confirm the documentation.

**Final Note**

Last, note that by participating in the interactive process, you are not admitting that your employee has a "disability" as defined by the ADA

**Additional resources**

Need to know more information on the ADA? Please, contact Rocky Mountain Disability and Business Technical Assistance Center at (800) 949-4232.



# SAMPLE FORMS



## **EMPLOYEE INCIDENT REPORT**

This report is to be completed when an occupational illness or injury occurs. If an employee is injured or develops a job-related illness (developed gradually e.g., tendonitis) as a result of their employment they must complete and submit the "Incident Report". If the employee is unable to complete the form, the supervisor must complete on their behalf.

**EMPLOYEE:** Please complete below. Upon completion, please give this form to your supervisor. An employee has 30 day to report an incident.

**EMPLOYEE COMPLETES THIS SECTION:** (If the employee is unable to complete the form, the supervisor must complete on their behalf)

**Social security number:** \_\_\_\_\_

**Name (print):** \_\_\_\_\_ **Sex** ☐ Male ☐ Female

**Home Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Home Phone:** \_\_\_\_\_ **Work Phone:** \_\_\_\_\_

**Department:** \_\_\_\_\_ **Job Title:** \_\_\_\_\_

**Supervisor Name:** \_\_\_\_\_ **Phone Number:** \_\_\_\_\_

Employment Type: ☐ Full-time ☐ Part-time ☐ Regular ☐ Temporary ☐ Seasonal ☐ Volunteer

Do you have other employment? ☐ No ☐ Yes If so, where \_\_\_\_\_

**Date of Incident:** \_\_\_\_\_ **Time of Incident:** \_\_\_\_\_

Address/Bldg, name & room # of incident: \_\_\_\_\_

**State all parts of body and type of injuries involve** (e.g. bruised right elbow)

\_\_\_\_\_  
\_\_\_\_\_

**Describe how incident occurred:** \_\_\_\_\_

\_\_\_\_\_

**Incident was reported to:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Do you require medical treatment for this injury?**

☐ No medical treatment ☐ Declined treatment at this time ☐ Treatment was/will be provided by:

Name (facility or physician): \_\_\_\_\_

**I, the injured employee, herein certify the information above is true and to best of my knowledge.**

**Date:** \_\_\_\_\_ **Signature of employee:** \_\_\_\_\_

**SUPERVISOR:** Please complete below and fax or mail to the MACo Claims Office at fax #: 406-443-4161, PO Box 7059, Helena, MT 59604.

**Important:** All injuries must be reported with in 30 days.

**Supervisor Completes This Section**

**Supervisor Name:** \_\_\_\_\_ **Work Phone:** \_\_\_\_\_

**Name of injured employee:** \_\_\_\_\_

Did employee lose time from work after date of injury? ☐ Yes ☐ No ☐ Unknown

If 'yes' last day worked: \_\_\_\_\_ Date employee returned to work: \_\_\_\_\_

**Describe what happened:**

**When did this happen?**

**Where did this event happen?**

**Was there equipment involved?** ☐ Yes ☐ No If you answered "yes" what was the equipment:

**How could this have been prevented?**

**Do you have any reason to question this incident?** ☐ Yes ☐ No If yes, please describe:

**Date:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Title:** \_\_\_\_\_

***Montana Association of Counties  
Workers' Compensation Trust***

PO Box 7059  
Helena, MT 59604

(406) 442-1178  
Fax (406) 443-4161

# WORKERS' COMPENSATION

## INSURANCE COVERAGE

# EMPLOYEE NOTICE

Date:  
Policy Number:

The above-named employer's workers' compensation insurance coverage is active and in good standing for the period of to , provided the employer meets all premium and reporting requirements.

### IF YOU ARE INJURED

You should report any on-the-job injury to your supervisor, employer, or insurer as soon as possible. You must report the accident within 30 days. A sole proprietor, partner, manager of a manager-managed limited liability company, member of a member-managed limited liability company, or corporate officer covered under the Montana Workers' Compensation Act must report an accident to the insurer within 30 days.

Report minor injuries to your employer whether or not you receive medical treatment. After you report the injury, your employer has 6 days to notify their insurer. You must submit a written First Report of Injury within 12 months from the date of the accident. You can submit this form to your employer, insurer, or the Department of Labor and Industry.

All employees sustaining a compensable work related injury or occupational disease, other than those who are exempted by statute (Section 39-71-401, MCA), are covered for medical and wage-loss benefits.

### You have the right to choose your initial treating physician.

You may continue to receive treatment from your physician unless you receive written notice of referral to a preferred provider or a managed care organization. After providing you with a referral notice, the insurance carrier is no longer liable for treatment provided by your physician unless authorization is obtained to continue treatment.

**For specific information about this policy, call or write your employer's insurance carrier:**  
(Insert insurer name, address and phone number here)

**For general information about workers' compensation, call or write: Montana Department of Labor and Industry, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011, Phone (406) 444-6532.**

FAILURE TO POST THIS SIGN OR POSTING AN ALTERED SIGN IN THE WORKPLACE WILL RESULT IN A \$50 FINE AGAINST THE EMPLOYER!

Montana Association of Counties Workers'  
Compensation Trust

**MACo-JPA**

### First Report

of Injury or Occupational Disease

**MACO CLAIMS DEPARTMENT**

PO Box 7059 Helena, MT 59604-7059

**Adjuster Date Stamp**

### Worker

**Highlighted Areas are Mandatory Fields**

LAST NAME	FIRST NAME	M.I.	DATE OF BIRTH	SOCIAL SECURITY NUMBER
HOME ADDRESS			CITY	STATE
PHONE NUMBER	EDUCATION	GENDER		NUMBER OF DEPENDANTS
	<input type="checkbox"/> LESS THAN HIGH SCHOOL <input type="checkbox"/> GED OR HIGH SCHOOL DIPLOMA <input type="checkbox"/> BEYOND HIGH SCHOOL	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN		<input type="checkbox"/> MARRIED <input type="checkbox"/> SEPARATED <input type="checkbox"/> NOT MARRIED <input type="checkbox"/> UNKNOWN

### Wages

DATE HIRED	GROSS EARNINGS FOR FOUR PAY PERIODS PRECEDING THE INJURY			
	DATE/AMOUNT /	DATE/AMOUNT /	DATE/AMOUNT /	DATE/AMOUNT /
EMPLOYMENT STATUS	NUMBER OF DAYS WORKED PER WEEK	WAGE		
<input type="checkbox"/> FULL TIME <input type="checkbox"/> PART TIME <input type="checkbox"/> SEASONAL <input type="checkbox"/> VOLUNTEER			<input type="checkbox"/> HOUR <input type="checkbox"/> WEEK <input type="checkbox"/> MONTH <input type="checkbox"/> OTHER <input type="checkbox"/> DAY <input type="checkbox"/> BI-WEEKLY <input type="checkbox"/> YEAR	
IN ADDITION TO GROSS EARNINGS CITED ABOVE WORKER RECEIVED			ESTIMATED VALUE IF ANY	
<input type="checkbox"/> ROOM & BOARD <input type="checkbox"/> OVERTIME <input type="checkbox"/> BONUS <input type="checkbox"/> COMMISSIONS <input type="checkbox"/> OTHER			TIME EMPLOYEE BEGAN WORK	

<b>WORKED NEXT SCHEDULED SHIFT</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>OFF WORK MORE THAN 4 WORK DAYS</b> <input type="checkbox"/> YES <input type="checkbox"/> No <input type="checkbox"/> NOT SURE	<b>DATE LAST WORKED</b>	<b>DATE OF RETURN TO WORK</b>	<b>FULL WAGES PAID FOR DATE OF INJURY</b> <input type="checkbox"/> YES <input type="checkbox"/> No	<b>SALARY CONTINUED</b> <input type="checkbox"/> YES <input type="checkbox"/> No
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### Accident Description

<b>JOB TITLE</b>		<b>DESCRIPTION OF ACCIDENT</b>					
<b>CAUSE OF INJURY</b>	<b>CAUSE CODE</b>	<b>PART OF BODY</b>	<b>PART CODE</b>	<b>NATURE OF INJURY</b>	<b>NATURE CODE</b>	<b>DATE OF INJURY</b>	<b>TIME OF INJURY</b>
<b>DATE DISABILITY BEGAN</b>	<b>DATE OF DEATH</b>		<b>NAMES OF WITNESSES</b> 1) 2) 3)				
<b>ACCIDENT ON EMPLOYER'S PREMISES</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	<b>ACCIDENT ADDRESS OR LOCATION</b> CITY STATE POSTAL CODE						
<b>DATE EMPLOYER NOTIFIED</b>	<b>ACCIDENT REPORTED TO</b>			<b>SAFETY EQUIPMENT PROVIDED</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>SAFETY EQUIPMENT USED</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	

### Medical

<b>ATTENDING PHYSICIAN'S NAME</b>	ADDRESS	STATE	POSTAL CODE	PHONE NUMBER
<b>HOSPITAL NAME</b>	ADDRESS	STATE	POSTAL CODE	PHONE NUMBER
<b>TYPE OF INITIAL MEDICAL TREATMENT RECEIVED</b> <input type="checkbox"/> NO TREATMENT <input type="checkbox"/> EMERGENCY ROOM <input type="checkbox"/> TREATMENT ON-SITE BY EMPLOYER OR MEDICAL STAFF <input type="checkbox"/> CLINIC/DR. OFFICE <input type="checkbox"/> HOSPITAL				

### Signature

"This is my claim for workers' compensation benefits due to the on-the-job injury, occupational disease or death of the above named worker. I understand that signing this claim for compensation authorizes the release to the workers' compensation insurer or its agent, rehabilitation records, Social Security records and health care information (medical records, pursuant to HIPAA, Public Law 104-191, 42 USC section 1301, et. seq., and section 39-71-604, MCA) that are directly relevant to the claimed injury, disease or death. I also understand that if I obtain or exert unauthorized control over workers' compensation benefits to which I am not entitled, I may be prosecuted for theft."

**Signature of Injured Worker or Beneficiary**

**Date**

### Employer

<b>EMPLOYER NAME</b>		DOING BUSINESS AS		<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER (TAX ID)</b>	
<b>MAILING ADDRESS</b>	<b>CITY</b>	<b>STATE</b>	<b>POSTAL CODE</b>	<b>PHONE NUMBER</b>	
LOCATION OF OPERATION, IF DIFFERENT FROM MAILING ADDRESS			<b>NATURE OF BUSINESS SIC/NAICS CODE</b>	SELF-INSURED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
EMPLOYER IS A <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> LIMITED LIABILITY COMPANY		INJURED WORKER IS A <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION <input type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> A MEMBER OF THE EMPLOYER'S (SOLE PROPRIETOR OR PARTNER) FAMILY LIVING IN THE EMPLOYER'S HOUSEHOLD			
<b>DO YOU HAVE ANY REASON TO QUESTION THIS ACCIDENT THIS ACCIDENT?</b> IF YES, PLEASE EXPLAIN FULLY. USE SEPARATE SHEET IF YOU NEED ADDITIONAL SPACE				<b>WAS WORKER INJURED WHILE IN YOUR EMPLOY</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>Prepared By</b>	<b>Official Title</b>	<b>Phone Number</b>	<b>Date</b>		
<b>PAYROLL CLASSIFICATION CODE UNDER WHICH YOU REPORT EMPLOYEE'S WAGES</b>		<b>AUTHORIZED EMPLOYER'S SIGNATURE</b> _____ <b>DATE</b> _____			

### Insurer

<b>CLAIM ADMINISTRATOR CLAIM NUMBER</b>	<b>DATE REPORTED TO CLAIM ADMINISTRATOR</b>	THE ABOVE INFORMATION IS CORRECT WITH THE FOLLOWING EXCEPTIONS <input type="checkbox"/> (ATTACH EXTRA SHEETS IF BOX AT RIGHT IS CHECKED)	
<b>THIRD PARTY ADMINISTRATOR'S NAME</b>		<b>CLAIM ADMINISTRATOR ADDRESS</b>	<b>INSURER FEIN</b>
<b>INSURER NAME</b>		<b>THIRD PARTY ADMINISTRATOR FEIN</b>	
<b>POLICY NUMBER</b>	<b>POLICY EFFECTIVE DATE</b>	<b>POLICY EXPIRATION DATE</b>	

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